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A TREATISE ON INTERNATIONAL LAW, by Roland R. Foulke, of the Philadelphia Bar. Philadelphia, The John C. Winston Co., 1920. Two volumes. Vol. I, pp. 482, lxxxviii; Vol. II, pp. 518, lxxxviii.

There would seem to be at least three sufficiently plausible reasons for the appearance of a new treatise on international law. For one thing, such a treatise might well be written for the purpose of arranging the subject matter according to some more logical and effective scheme of classification. A great deal may be said in criticism of traditional classifications. For another thing, a new treatise might well present new and more scientific analysis of no inconsiderable part of the subject matter. Analytical investigation in the light of modern developments in jurisprudence is urgently needed in the field of international law. Finally, a new treatise affords an opportunity to bring the subject matter up to date. There will be new editions of some of the standard treatises, of course, but the experiences of the past decade make new editions seem a little inadequate.

Mr. Foulke's *Treatise on International Law* appears to have been inspired in some measure at least by each of the above considerations. The author hopes that he has "succeeded in a more logical arrangement than that commonly found in the writers." He observes that a subject like international law, cultivated in practically the same furrows for many centuries, offers "a rich mine for analytical investigation," and he writes, as he remarks in his preface, "in the attempt to clear away some of the many obscurities and misconceptions which pervade the subject of international law and which are not only discouraging to the student but irritating to the mature reader." Finally, in his own peculiar way, the author has attempted to bring his treatise up to date.

As regards classification, the author's achievements on the whole seem to be somewhat meager. He divides his work into four parts: Part I, Preliminary; Part II, Substantive International Law; Part III, Remedial International Law; and Part IV, Summary. There are three chapters in Part I entitled respectively Definition and Nature of Law, Facts of International Life, and Definition and Nature of International Law. The chapters in Part II are as follows: Intercourse Between Independent States, The Territory of an Independent State, The Open Sea and Branches Thereof and the Maritime Belt, Treaties, Independent States and Aliens, and State Conflicts. The chapters in Part III are entitled respectively: Redress for Damage to a State Interest, War, Neutrality, Conduct of Hostilities, Property in War, Public Property in War, Private Property on Land and in Maritime Belt in Time of War, Private Property on the High Sea in War, Private Individuals in War, and Character of Individuals and Property. This scheme in outline follows the traditional division of the subject into introductory matter, peace, war, and neutrality. There are numerous innovations in terminology as well as in the order of the chapters and the arrangement of their content. The advantages derived from the new terminology and arrangement are not always obvious. But it is worth something that the author has had the courage to launch an attack upon an archaic and illogical system.

In the matter of analytical investigation the author has made more substantial contributions. It is in this respect, indeed, that his treatise is most valuable. The reader may be prejudiced at times by the author's habit of introducing an analysis with the suggestion that writers on international law are hopelessly confused in respect to the topic under discussion and that the author will now proceed to set them right. It may be felt that analogies with the principles of municipal law have been used too freely. The reader will probably disagree with many of the conclusions, some of which may even seem a bit fantastic. Throughout the treatise, however, the serious student will find essays in analysis which will repay careful study. Part I especially contains excellent analytical work, including matter upon which every young graduate student in international law might well be required to sharpen his wits. An able lawyer, familiar with legal concepts and accustomed to accurate legal reasoning, has applied himself to the theories of international law advanced by the leading English and American writers. The results are sometimes startling, usually suggestive, and frequently illuminating.

The treatise does not, unfortunately, bring the subject matter adequately up to date. Some of the most valuable of recent monographs seem to have been overlooked. The great mass of material to be found in the legislation, orders, cases, and state papers of the recent war has received insufficient attention. Possibly the omission was deliberate. The occasional reference which the author makes to the events of the war would seem to indicate that he is in no temper to appraise those events in scientific fashion. A few of his reflections, indeed, read rather more like something from our recent departments of propaganda.

The gravest defects in the treatise are due primarily, it would seem, to the very limited categories of sources upon which the author has relied. Of the periodicals, he makes frequent and somewhat promiscuous references to the *American Journal of International Law* and to some of the leading American law reviews, but almost no references of any significance to the many excellent periodicals published abroad. Surprisingly little use is made of arbitrations, treaties, state papers, cases, or other source materials. For all that is indicated in the text or footnotes, such documentary collections as Sturdza, Hertset, the British and Foreign State Papers, and the monumental Martens collection may have been left practically untapped. Well known monographs by Baldassarri, Catellani, Demorgny, Lammasch, Moulin, Niemeyer, Politis, Strupp, Wehberg, and many others are either not cited at all or cited only by author and title. There is practically no evidence in the text indicating that such studies have contributed anything to the author's conclusions. G. F. von Martens, Vattel, Bynkershoek, and others are cited only in the English translations. Klüber, Bluntschli, Pradier-Fodéré, and Huber are cited only at second-hand. Calvo, Fiore, Holtzendorff, Liszt, Nys, Bonfils, Despagnet, Heffter, F. de Martens, Moser, Piédelièvre, Rivier, and other authors of standard treatises are not cited at all. On the other hand, there are 185 references to Hersey's elementary text-book and 285

references to Halleck. It may be inferred that the work is based largely upon what is available in fifteen or more of the better treatises and textbooks, written in English.

A survey of the sources used provokes misgiving as to whether the author was really prepared to write a treatise. Would it have been possible to present his contributions along the line of critical analysis in a smaller work on the theory of international law? Making due allowance for unfamiliarity with the continental literature, such a work could have been admirably done. Many of the criticisms which are likely to be aimed at the treatise could have been avoided.

As the work stands, it has a unique but somewhat restricted value. It is unfortunate that it should have been prejudiced by the extravagant, not to say ridiculous, claims which the publishers have made for it.

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OUTLINES OF HISTORICAL JURISPRUDENCE. By Sir Paul Vinogradoff, F.B.A., Fellow of the Russian Academy, Corpus Professor of Jurisprudence in the University of Oxford. Volume I, Introduction, Tribal Law. Oxford University Press, London, Edinburgh, Glasgow, New York, Toronto, Melbourne, Capetown, Bombay. Humphrey Milford, 1920. Pp. X, 428.

The title itself of this latest production of the leading English historian of law seems in a way a challenge to our up-to-the-minute twentieth century sociological jurisprudence which is the prevailing style, but Vinogradoff's historical jurisprudence is a very different thing from that of Savigny, which finally gave us a natural law with an historical content, or even from that of the English comparative jurists of the nineteenth century, who apparently assumed, "that all nations are constituted on the same lines and reproduce the same characteristic features in their treatment of economic and social problems." (Cf. p. 148). Vinogradoff would have the student of historical jurisprudence "trace the life of juridical ideas in their action and reaction on conditions"; that is, while "the order followed by legal history is chronological, that followed by historical jurisprudence is, ideological." (p. 155).

With this purpose in mind he gives in this first volume a careful re-examination of the basic legal institutions of tribal society and promises a second volume treating the jurisprudence of the Greek City on the same plan. In the execution of this he follows the lead of Maitland, whom he characterizes as the "most brilliant legal historian of modern England," in his scepticism as regards generalizations. On that much discussed question as to whether primitive society was arranged on the matriarchal or the patriarchal model, Vinogradoff says, "considering the immense variety of conditions in ancient times, it is improbable that any exclusive theory will be true in all cases." This is but one of the many instances which show that the author has successfully steered clear of the difficulties and dangers of the ideological method of presentation, which he himself admits, and has presented